



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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4941.00-00

Legend:

Director1	=
Director2	=
Shopping Center	=
Art Center	=
Founder	=

Dear

This is in reply to your ruling request dated February 17, 2009, from your authorized representatives, regarding the proper treatment under section 4941 of the Internal Revenue Code ("Code") of your proposed display of works of art at Shopping Center.

FACTS

You are recognized as exempt from federal income tax under section 501(c)(3) of the Code and are classified as a private foundation within the meaning of section 509(a). You carry out your charitable purposes through the promotion of public awareness and appreciation of the leading twentieth century artists and their creations. Director1 and Director2 are current members of your board of directors. Director1 and Director2 are married to each other. Director2 is the daughter of Founder.

Prior to his death, Founder and his wife built a significant collection of modern art ("the Collection"), which Founder made accessible to the public by displaying the pieces in office buildings he owned and in Shopping Center, in which he owned an interest. He also lent portions of the Collection to museums worldwide and displayed several pieces in an airport terminal. Such museums and the airport terminal are not owned by disqualified persons. Founder also contributed the funds to enable you to build Art Center. Art Center is an art museum that is classified as a public charity pursuant to section 509(a)(2) of the Code. You lend works in your art collection to Art Center and provide substantial financial support to Art Center.

Founder created you during his lifetime. Under the terms of Founder's Will and Management Trust Agreement most of the Collection was bequeathed to you. Although you lend works in the Collection to Art Center for public display, the size of the Collection is such that only one-third of it can be exhibited at Art Center at any given time. Therefore, you wish to share additional pieces by displaying several works at Shopping Center, a major retail mall. Director1 and Director2 own more

than 35 percent of the Shopping Center. Your collection currently consists of more than 350 pieces of art and would display only between five and ten of those pieces at the Shopping Center. The displays would acknowledge that you are the owner of the art, and encourage visitation to Art Center to view additional works in the Collection. You state that Shopping Center will not attempt to capitalize commercially upon your display of the art at Shopping Center, either through advertising or otherwise.

You state that Shopping Center has hundreds of thousands of visitors each year and that by displaying the pieces there you will be using Shopping Center as a forum for making some of your works of art available for public enjoyment. You also state that viewers will be encouraged to visit Art Center to see additional works there. You state that displaying your works of art in Shopping Center is a valuable means of building and maintaining public awareness of Art Center and is vitally important to its successful operation. Additionally, after Founder's death, you have continued to display a portion of the collection to independent museums and the airport terminal.

RULING REQUESTED

You have requested the following ruling:

The display of your works of art at Shopping Center will not constitute an act of self-dealing, as described in section 4941 of the Code.

LAW

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4941 of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) of the Code defines self-dealing as any direct or indirect:

- (A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;
- (B) lending of money or other extension of credit between a private foundation and a disqualified person;
- (C) furnishing of goods, services, or facilities between a private foundation and a disqualified person;
- (D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;
- (E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation

(F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than certain employment agreements.

Section 4946 of the Code defines "disqualified persons" with respect to a private foundation as substantial contributors, foundation managers, 20 percent owners of a substantial contributor, family members of an individual who is one of the above, and entities 35 percent owned by one of the above.

Section 4946(b)(1) of the Code provides that a foundation manager is, with respect to any private foundation, an officer, director, or trustee of the foundation.

Section 4946(d) of the Code provides that the term "family member," as used in section 4946(a), includes a spouse, children, grandchildren, great grandchildren, any spouses thereof, and ancestors.

Section 53.4941(d)-2(d)(1) of the Foundation and Similar Excise Taxes Regulations ("foundation regulations") provides that the furnishing of goods, services, or facilities between a private foundation and a disqualified person shall constitute an act of self-dealing.

Section 53.4941(d)-2(f)(2) of the foundation regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. For example, the public recognition a person may receive as a substantial contributor, which may arise from the private foundation's charitable activities, will not in itself result in an act of self-dealing.

Section 53.4941(d)-2(f)(9) of the foundation regulations provides an example in which M, a private foundation, makes a grant of \$50,000 to the governing body of N city for the purpose of alleviating the slum conditions which exist in a particular neighborhood of N. Corporation P, a substantial contributor to M, is located in the same area in which the grant is to be used. Although the general improvement of the area may constitute an incidental and tenuous benefit to P, such benefit by itself will not constitute an act of self-dealing.

Rev. Rul. 74-600, 1974-2 C.B. 385, describes a situation in which a private foundation placed three of its paintings in the residence of a disqualified person, where they were displayed with the disqualified person's large private art collection. Semi-annual tours, and other "special" tours, were conducted, on which over 2,000 persons viewed the paintings. It was held that, even though the paintings were sometimes made available for viewing by the public, the placement in the residence of a disqualified person resulted in the direct use of the foundation's assets by or for the benefit of the disqualified person, and therefore self-dealing under section 4941(d)(1)(E) of the Code.

ANALYSIS

In reviewing whether a proposed act constitutes self-dealing, we must first determine if any disqualified person is a party to the transaction. Section 4946(a)(1) defines disqualified persons as foundation managers, substantial contributors, family members of foundation managers or substantial contributors, and entities 35 percent owned by foundation managers or their family

members. Pursuant to section 4946(b)(1), the directors of a private foundation qualify as foundation managers. Director1 and Director2, husband and wife, are disqualified persons by way of being your foundation managers. Director2 is also a disqualified person by way of being a family member of Founder. Director1 is therefore also a disqualified person by way of being a family member of Director2. Shopping Center is a disqualified person by way of being an entity more than 35 percent owned by Director1 and Director2, who are foundation managers and the family members of a substantial contributor, your Founder.

Section 4941 of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(C) and section 53.4941(d)-2(d)(1) of the foundation regulations define self-dealing as the furnishing of goods between a private foundation and a disqualified person. Additionally, section 4941(d)(1)(E) defines self-dealing as the use of the assets of a private foundation by or for the benefit of a disqualified person. The display of your works of art at Shopping Center is the furnishing of goods between you and disqualified persons, and the use of your assets by and for the benefit of disqualified persons. Therefore, the display of your works of art at Shopping Center constitutes an act of self-dealing, unless an exception applies.

Section 53.4941(d)-2(f)(2) of the foundation regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its assets will not, by itself, constitute an act of self-dealing. Only one-third of your art collection may be displayed at any point in time at Art Center. By placing some of the artwork on property that is generally accessible to the general public, you are furthering your exempt purpose of promoting public awareness and appreciation of the leading twentieth century artists and their creations. The primary beneficiary of your artwork is the general public who views it, whether at the Art Center, Shopping Center, or the airport terminal. We believe that based on the facts and circumstances cited above, any benefits to the disqualified persons in this case are incidental or tenuous within the meaning of section 53.4941(d)-2(f)(2) of the regulations. Additionally, we believe that the facts of this case are distinguishable from those described in Rev. Rul. 74-600. In this case, you have stated that you will only display a small amount, five to ten pieces, of your total collection on property owned by disqualified persons and that such pieces could not have been viewed at the Art Center because of its limited space, so that such art would have otherwise been held in storage. There is no evidence that disqualified persons have retained control over public access to the artwork. All of such artwork will be displayed on property that is routinely accessible to the general public and none of the artwork will be identified with any disqualified person.

RULING

The display of your works of art at Shopping Center will not constitute an act of self-dealing, as described in section 4941 of the Code.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Any changes that may have a bearing upon your tax status should be reported to the Service. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records. Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provision of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Ellen Berick
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437